



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R08-RCRA-2010-0933; FRL -9712-3]

South Dakota: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: The EPA is granting final authorization of the changes to the hazardous waste program revisions submitted by South Dakota. The Agency published a Proposed Rule on December 27, 2010, and provided for public comment. No comments were received on the Resource Conservation and Recovery Act (RCRA) program issues. There was one comment from the South Dakota State Deputy Attorney General regarding Indian country language. No further opportunity for comment will be provided.

DATES: This final rule is effective on [insert date of publication in the FR].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-RCRA-2010-0933. All documents in the docket are listed on the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at: EPA Region 8, from 8 a.m. to 3 p.m., 1595 Wynkoop Street, Denver, Colorado 80202, contact: Moyer Lin, phone number (303) 312-6667, e-mail address: lin.moyer@epa.gov, or SDDENR, from 9 a.m. to 5 p.m., Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501, contact: Carrie Jacobson, phone number (605) 773-3153.

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SUPPLEMENTARY INFORMATION:

I. Authorization of Revisions to South Dakota’s Hazardous Waste Program

On April 1, 2010, South Dakota submitted a final complete program revision application seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a Final decision that South Dakota’s hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. For a list of rules that become effective with this Final Rule please see the Proposed Rule published in the December 27, 2010 **Federal Register** at 75 FR 81187.

Response to Comments: The EPA proposed to authorize South Dakota’s State Hazardous waste management Program revisions published in the December 27, 2010 **Federal Register** at 75 FR 81187. The EPA received only one comment from the state of South Dakota objecting to the EPA’s definition of Indian country, where the state is not authorized to administer its program. Specifically, the state disagreed that all “trust land” in South Dakota is Indian country. With this Final Rule the EPA is clarifying that Indian country lands within the exterior boundary of the Yankton Reservation are excluded from the state’s authorized program. Further explanation of this interpretation of Indian country can be found at 67 FR 45684 through 45686 (July 10, 2002).

II. Statutory and Executive Order Reviews

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not

subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular

voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective [insert date of publication in the Federal Register].

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous waste, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 2, 2012.

James B. Martin,
Regional Administrator,
Region 8.

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